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Introduction



Fellow Legal Professionals and Persons Interested in NATO,

This edition of our electronic legal gazette starts with an important and substantive review of the decisions of the Constitutional Court of Bosnia Herzegovina on Alleged Human Rights Violations during NATO-led Stabilization Force Operations (SFOR) by Natalie Bergmann and Jasmin Porobic. This article is commended to all persons familiar with the Balkans operations and interested in how a post-conflict state addresses allegations of misconduct by visiting forces that arrested and detained its citizens. Our colleagues from ISAF, LTCDR Flavin and LTCOL Meyers provide a vividly descriptive commentary on the legal system of Northern Afghanistan that they recently observed during their visit to the Provincial Reconstruction Team in Mazare-e-Sharif. Frederic Ischebeck-Baum sends a timely report of the Law of Armed Conflict workshop conducted during the first week of December at the NATO School. Vincent Roobaert is publicly thanked for his continued effort to invite to our attention books that we should be reading. In this issue he reviews J.M. Farrall's *United Nations Sanctions And The Rule Of Law*.

This issue, the eighth in 2008 and 18th since December 2006, displays the continued interest in sharing legal knowledge via an electronic format. Through the efforts of the George Marshall Center For Strategic Studies in Garmish, Germany, past issues are being translated into Russian and we hope that in 2009 we will receive articles written in French for publication. We plan to introduce a new format beginning in 2009 and will be using the knowledge contained in our past and future issues to move the draft NATO Legal Deskbook closer to final publication.

In closing, Dominique Palmer De Greve, and I wish you a wonderful holiday season and look forward to seeing articles authored by you about the legal issues NATO and its partners face in 2009.

Sincerely,
Sherrod Lewis Bumgardner

The Constitutional Court of Bosnia Herzegovina Decisions on Alleged Human Rights Violations during NATO-led Stabilization Force Operations

Ms. Natalie Bergmann (former Asst Legal Adviser – HQ EUFOR Althea) & Mr. Jasmin Porobic (Senior Claims Adjudicator – NATO HQ Sarajevo)

1. Introduction

The Constitutional Court of Bosnia and Herzegovina (the Constitutional Court) ruled on several appeals¹ against Bosnia and Herzegovina (BiH) for the arrest of citizens of BiH and their detention by the international military force deployed in BiH, namely NATO-led Stabilization Force (SFOR). The appellants claimed that their human rights protected under the European Convention of Human Rights (ECHR) and the Constitution of BiH were violated, in particular the right to prohibition of torture, the right to the privacy of family life, home and correspondence and the right to freedom and safety. The appellants filed compensation claims for the material and immaterial damages resulting from these violations.

In the above-mentioned cases, the Constitutional Court decided on the situations which involved actions by SFOR troops and therefore raised the question of the applicability of the ECHR for its operations. This article will

- (i) outline the facts and reasoning of the decisions of the Constitutional Court;
- (ii) discuss the legal justification of international military force operations such as SFOR acting under Chapter VII of the UN Charter;
- (iii) examine the issue of applicability of the ECHR to the international military presence in BiH under the UN mandate, and;
- (iv) shortly outline practice of the European Court of Human Rights (ECtHR) in similar cases.

2. Facts and Merits of the Decision by the Constitutional Court

The appellants claimed that they were arrested and handcuffed by SFOR troops and then taken into detention in an unknown location. They alleged that dark glasses and headphones were put on their heads preventing them from seeing and hearing anything. It was further stated that the forces arresting the appellants had not worn any insignia or produced any kind of summons or indictment. In the case of Dusko Tesic and Others, the appellants claimed to have been detained for up to 35 days in dark and extremely cold facilities. During the periods of detention, the appellants alleged that they were prevented from communication with their family members. They also claimed that SFOR carried out searches of the appellants' houses and confiscated certain items.

According to appellants they were also interrogated and were later on informed that they were arrested for having violated the Dayton Peace Accord².

Based on the facts presented by the appellants, it was claimed that (i) their rights to liberty and security guaranteed in Art 5, paragraphs 1, 2, 3, 4, and 5 of the ECHR, (ii) their right not to be subjected to torture or inhuman or degrading treatment or punishment under Art 3 ECHR and (iii) their right to private and family life, home and correspondence under Art 8 ECHR, were violated. Additionally, the appellants referred to the violations of the provisions of the Constitution of BiH, specifically Art II – Human Rights and Fundamental Freedoms³.

¹ Bogdan Subotic v. Bosnia and Herzegovina (AP-696/04) dated 23 September 2005 and Dusko Tesic and Others v. Bosnia and Herzegovina (AP 2582/05) dated 16 January 2005.

² The General Framework Agreement for Peace in BiH (Dayton Agreement) signed on 14 Dec 1995 in Paris.

³ Art II/3.b) – Prohibition of Torture; Art II/3.d) – Right to Freedom and Safety; Art II/3.f) – Right to Private and Family Life, Home and Correspondence.

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The Constitutional Court in the decision of admissibility and merits partly upheld the appeals. Violations of (i) the right to prohibition of torture, (ii) the right to liberty and safety and (iii) the right to private and family life and correspondence were established. However, the appeals against BiH in the matter of their arrest and detention by SFOR were barred and dismissed as ill-founded in relation to Art 5 para. 3 ECHR.

The Constitutional Court recognized that these appeals were surrounded by special circumstances as the cases concern the conduct of the members of SFOR which were present in BiH on the basis of the Dayton Agreement and the respective UN Security Council Resolutions. It was acknowledged that the international military forces enjoy immunity in BiH and do not fall under the jurisdiction of the national authorities. Taking into account the lack of jurisdiction over SFOR, the Constitutional Court acknowledged the necessity for BiH, as a subject of the international law, to respect its obligations under international and national law to guarantee the highest level of protection of human rights for all persons on the territory of BiH. The Constitutional Court thus ordered BiH to pay monetary compensation to the appellants for the material and immaterial damage resulting from violation of their rights from the ECHR and the Constitution of BiH.

For the question of jurisdiction of the Constitutional Court over the actions of SFOR it is interesting to note that the appellants filed the applications against the state of BiH for the alleged violations of human rights by SFOR operations. The Court found the appeals admissible as it has the jurisdiction⁴ over issues of the compatibility of the actions or omissions of BiH with the Constitution of BiH and the ECHR and its Protocols. The Constitution of BiH accepts the international standards for the protection of human rights and provides that rights and freedoms from the ECHR and its Protocols will have direct application in BiH and have priority over all other laws. The Constitutional Court also recalled that BiH has undertaken the obligations to guarantee the highest level of protection of human rights and freedoms on its territory and established that "Bosnia and Herzegovina and its Entities are therefore responsible for the protection of human rights of all persons on their territory and thus they are responsible parties for the protection of the appellant's rights." The Constitutional Court thus deemed that it has jurisdiction *ratione personae* to decide on the subject appeals.

Although the Constitutional Court noted that the appeals were not directed against SFOR but against BiH, and that it would not deal with the issue of responsibility of SFOR for the violation of the appellants' rights but with the issue of responsibility of the competent national (BiH) authorities, the Constitutional Court concluded that "human rights have been violated by persons who are not accountable to national authorities" and that this fact could not remove the State's responsibility to protect human rights of its citizens. The Constitutional Court could not "find any reasons which could justify the arrest and detention of the appellants", and it held that this is a sufficient basis for concluding, "that the arrest and detention of the appellant was unlawful in the sense of Art 5 Para. 1 of the European Convention." It decided that the purpose of the arrest and detention performed by SFOR were to solely obtain information on Persons Indicted for War Crimes (PWICS) and this would not represent valid grounds for the arrest and detention of the appellants in the subject cases.

⁴ The jurisdiction over this matter stems from Art VI/3.b) of the Constitution of BiH and Art 16 para. 2, Art 59 para. 2, line 2, Art 61 para. 1, 2 and 3, and Art 76 Item 2 of the Rules of Procedure of the Constitutional Court of BiH (BiH Official Gazette no 60/04).

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It was further noted that BiH "has transferred a part of its State competences to the international community and its bodies and organizations, including IFOR and later SFOR." According to Art 6 of Annex 1A to the Dayton Agreement, SFOR has the authority to do all that it judges necessary and proper to carry out its responsibilities. On the other hand, the Constitution of BiH and Annex 6 to the Dayton Agreement provide that BiH has the obligation to guarantee the highest level of protection of human rights to all persons on its territory. The Constitutional Court notes that neither the provisions of the Dayton Agreement nor international law oblige BiH to give priority to the application of Annex 1A or to "violate the principle of protection and fulfillment of the guaranteed fundamental rights and freedoms" but it considers all annexes of the Dayton Agreement as equally important.

Nevertheless, the Constitutional Court recognized that due to the immunity under the Status of Forces Agreement (SOFA)⁵, the actions undertaken by SFOR do not come under the jurisdiction of BiH and judicial bodies cannot take any decision concerning such matters. However, the decision states that BiH retains the responsibility to take appropriate steps to protect the victims, "even if the violation is a result of the actions of representative over whom the mentioned state has no *de facto* control." The Constitutional Court further argued that such appropriate steps would be a mere investigation on the circumstances surrounding the alleged incident which does not necessarily have to lead to positive result. According to the Constitutional Court, the ECHR does not impose an obligation to the state to achieve specific results but to conduct appropriate proceedings. The Constitutional Court concluded that BiH did not even address SFOR at all in order to obtain facts about the events and concluded that "the fact that SFOR may be held responsible for the actions violating the appellant's rights does not release the State from the obligation to take adequate measures of protection of the appellant's rights."

Further explaining its decision on the alleged violations of specific paragraphs of the Art 5 of the ECHR, the Constitutional Court concluded that the "content of the information giving to the appellant about the reasons for his arrest and detention does not meet minimum standards under Art 5 para. 2 of the European Convention" and therefore decided that respective appellant's right has been violated. The Constitutional Court also decided that there was no effective remedy at the disposal of the appellants for the review of "lawfulness" of the arrests and detentions and concluded that Art 5 para. 4 of the ECHR has been violated as well as Art 5 para. 5. When deciding on the appellant's claim on alleged violations of rights from Art 8 of the ECHR, the Constitutional Court deemed it necessary to interpret the wording of para. 2 of the Art 8 which states "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." The Constitutional Court ruled that the wording "in accordance with the law" can be interpreted in a broad sense, in particular the concept of "law" due to the specific situations concerning the activities of SFOR, so that Annex 1A of the Dayton Agreement and subsequent international documents applicable to the mission could be considered as "law" for the purpose of justifying the interference with the appellant's right.

⁵ Appendix B to Annex 1A of the Dayton Agreement: Agreement between the Republic of Bosnia and Herzegovina and the North Atlantic Treaty Organisation (NATO) Concerning the Status of NATO and its Personnel

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However, the Constitutional Court decided that "SFOR members in the case at hand exceeded the framework that is provided for both in the domestic law and in the standards of international documents. The *bona fides* of the member of SFOR in this specific case cannot by itself give rise to an assumption that the measures of coercion which they took were lawful." Taking into account that the Constitutional Court did not investigate the factual circumstances of the cases, it remains unclear on which basis the Constitutional Court made this statement.

3. Legal justification of international military operations in BiH

This chapter aims to question the merits of the Constitutional Court rulings and to describe the circumstances under which the actions of an international security force can be considered lawful in the context of international legal instruments.

The Dayton Agreement together with the annually renewed UN Security Council Resolutions set out the legal framework for the international security force in BiH. Considering the privileges, immunities and the robust mandate under Chapter VII, SFOR (now EUFOR and NHQSa) is often referred to as "untouchable" in BiH. The public opinion, sometimes even the domestic legal community, would see it as an organization which cannot be held liable for any of its actions. There is therefore a need to explain the legal background of the international military presence in BiH which provides both the legal justification for the actions of SFOR and the legal constraints in which the mission takes place.

The scope and the purpose of peace missions are described in the respective resolutions by the UN Security Council and every action of an international security force is thus limited by the mandate under international law. The rules of engagement for the use of military force strictly reflect those limitations under the mandate. Exceeding these governing principles would constitute an unlawful act and would trigger national criminal proceedings. The principle of exclusive national jurisdiction is recognized by the SOFA attached to the Dayton Agreement and it thus applies to all troops of the military presence in BiH. Any case of criminal or disciplinary offence which may be committed by NATO military personnel will be subject to the exclusive jurisdiction of their respective national elements.

Although checkpoints, raids or even temporary detention do constitute a serious intrusion in the private life and freedoms of the involved individuals, these activities are considered necessary in order to fulfill the mandate given by the UN Security Council. According to Art 1 UN Charter, the UN is expected to "maintain international peace and security, and to that end, take effective collective measures for the prevention and removal of threat to the peace and for the suppression of acts of aggression or other breaches of the peace." In the specific situation of BiH, the UN Security Council authorized its member states and NATO to establish a multinational military force to assist in the implementation of the military aspects of the Dayton Agreement. The Council authorized the mission to act under Chapter VII – Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression – which further justifies the actions of SFOR in the performance of its mandate to fight against anti-Dayton activities which present a threat to international peace and security and the rather fragile peace in BiH. So the authorization to intrude into the rights and freedoms of citizens of BiH derives directly from the UN Security Council and is required in order to fulfill the obligations under the UN Charter. To consider the ECHR as a legal obstacle for the international security force to perform its task as given by the UN Security Council would undermine the aim and purpose of Chapter VII missions.

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Another question of considerable importance is whether the powers delegated to international military force in BiH require the force to arrest and detain persons indicted by the UN International Criminal Tribunal for the former Yugoslavia (ICTY). The SC Resolution (1031) indeed mentions the ICTY and provides that "States shall cooperate fully with the ICTY and its organs in accordance with the provisions of resolution 827 (1993) and the Statute of the International Tribunal... Recognizes that the parties shall cooperate fully with all entities involved in implementation of the peace settlement, as described in the peace Agreement, or which are otherwise authorized by the Security Council, including the ICTY, and that the parties have in particular authorized the multinational force referred to in paragraph 14 below to take such actions as required, including the use of necessary force, to ensure compliance with Annex 1-A of the Peace Agreement..." The Force Commander is given the power of authoritative interpretation of military aspects of the Dayton Agreement, it is therefore up to his/her discretion to decide on military enforcement actions in order to ensure compliance with the terms of the Dayton Agreement. This includes the delegation to the Force Commander to decide whether to utilize those powers in assistance to the ICTY. So in the presented cases, the NATO Commander in charge has interpreted the mandate in a way that permits international military forces to arrest and detain PIFWCs by the ICTY and persons who are suspected to perform anti-Dayton activities and to support the PIFWC networks.

A similar question was ruled upon by the European Court for Human Rights (ECtHR) in a case which dealt with the detention of Mr. Saramati, of Albanian origin living in Kosovo, who was detained by KFOR troops for six months under the suspicion of his involvement in armed groups and posing a threat to KFOR and the security situation in Kosovo. The Court had to assess "whether this Court is competent to examine under the Convention those State's contribution to the civil and security presences which did exercise the relevant control of Kosovo." In particular it had to examine if there was a competence *ratione personae* to review acts of states on behalf of the UN and if it had jurisdiction to rule upon the relationship between the ECHR and the UN acting under Chapter VII of the Charter.

In this particular case, the Court recognized the "imperative nature" of the maintenance of international peace and security as the principal aim of the UN. Even though ensuring human rights has to be understood as an important contribution to this goal, the primary responsibility remains unchanged. Operations under Chapter VII are fundamental to secure peace and security therefore "the Convention cannot be interpreted in a manner which would subject the acts and omissions of the Contracting Parties which are covered by UNSC Resolutions and occur prior to or in the course of such missions, to the scrutiny of the Court. To do so would be to interfere with the fulfilment of the UN's key mission in this field including... the effective conduct of its operations. It would also be tantamount to imposing conditions on the implementation of a UNSC Resolution which were not provided for in the text of the Resolution itself."

In line with the argumentation, the ECtHR declared the complaints incompatible *ratione personae* with the ECHR. The reasoning can be expected to be applicable in analogy to any other military actions performed within the purpose and restraint of a respective UN Security Council mandate.

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4. Applicability of the ECHR to SFOR operations

Considering the fact that SFOR itself had neither a legal personality under international law nor was a contracting party to the ECHR, it cannot be bound directly by the ECHR. Nevertheless, SFOR – as a multinational force – was composed by its Troop Contributing Nations (TCNs) and most of them were signatory states of the ECHR. Whilst SFOR itself was therefore not in the legal position to violate any rights granted under the ECHR, the same possibility must be examined carefully in relation to its TCNs which were contracting parties to the ECHR.

Two issues have to be addressed separately: (i) the accountability of SFOR activities to the individual TCN, and (ii) the primarily territorial application of the ECHR.

4.1. Accountability of SFOR operations

When discussing the accountability of SFOR operations to the individual TCNs, the question has to be asked whether the activities of SFOR troops under a multinational chain of command can be understood as "state agents" of the sending nation or as "agents of the commanding organization." The outcome of this question is decisive in order to establish accountability for any action undertaken by SFOR troops in the fulfillment of their mandate, in particular whether this action is considered unlawful or in contradiction with other international obligations, such as under the ECHR.

Can an individual state be held accountable for a particular action of SFOR troops which operate under a multinational chain of command? In particular, if the Commander in charge orders a certain operation to be performed by troops from a different nation – a common scenario in a multinational security force. And who is in the position to decide if it was within the mandate? Who has the authority to interpret the mandate?

In addition, considering that neither SFOR nor NATO nor the UN are bound by the ECHR, do these circumstances represent a legal vacuum for human rights protection, or was the ECHR never envisaged to cover military operations done with the "blessing" of the UN Security Council?

The topic of command and control relationships between the UN and a NATO-led international security force was examined in detail by the ECtHR in the above discussed Saramati case. Regarding the question if the specific action of detention can be attributed to the UN, the ECtHR considered that the troops of the international security force "would operate... on the basis of UN delegated, and not direct, command." Chapter VII provides the foundation for such a delegation of UN security powers, even if it must be limited to acts of the delegate entity attributable to the UN. The Court acknowledged that the nature of security missions requires some delegation of command while the crucial question remains "whether the UNSC retained ultimate authority and control so that operational command only was delegated." In order to decide upon the existence of this ultimate authority and control, several factors should be taken into account: a) Chapter VII itself allows such a delegation, b) the relevant power was delegable, c) the delegation was actually prior and explicit, d) the UNSCR was sufficiently precise in limiting the mandate, e) a reporting system of military command was in place which enabled the UNSC at any time to cancel its authority (which it did not do).

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The reporting mechanism was particularly important as KFOR had taken up a position in an environment still fraught with uncertainties. The regular reporting guaranteed that the organization responsible for protection of international peace and security – being the UN Security Council – would be able to exercise sufficient control over KFOR activities and hence fulfilling its role ascribed by the UN Charter. A chain of command to the UN was therefore established and the remaining (national) command of the TCNs over its troops was not regarded as interfering with the effective operational (NATO) command. In this particular case, the ECtHR therefore decided that the impugned action was in principle attributable to the UN. As the UN has a legal personality separate from its member states and as it is not a contracting party to the ECHR, a respective violation of the ECHR rights cannot be claimed due to the missing *ratione personae*.

The same reasoning could be used in analogy to the claimed ECHR violations during SFOR operations. The operational command by NATO prevents that individual acts (as long as within the applicable operational regulations) can be attributable to individual nations from the involved troops, so it could be argued that the overall command and control by the UN (as constituted, *inter alia*, by the annual extension of the SFOR mandate) makes those acts if anything attributable to the UN which is not subject to the jurisdiction of the ECtHR.

4.2 Extraterritorial application of the ECHR

Another issue which needs to be considered when discussing the applicability of the ECHR for SFOR troops in BiH is the topic of the extraterritorial application of the ECHR (which is heavily discussed within the legal community). This will be presented through the practice of the ECtHR and its rulings in (i) the Bankovic case and (ii) the Issa case as well as (iii) the decision of the United Kingdom House of Lords in the Al Skeini case.

The ECHR was concluded in 1950 to ensure respect for the human rights and freedoms as listed in the Convention and it obliges the signatory parties to secure those rights "within their jurisdiction." The original draft of the ECHR was even stricter regarding its applicability as it referred to "all persons residing within their territories." Nevertheless, this reference was replaced by wording "within their jurisdiction" and in the *Travaux Préparatoires*, it was explained that: "the term 'residing' might be considered too restrictive. It was felt that there were good reasons for extending the benefits of the Convention to all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word." It should also be noted that the ECHR itself offers the possibility of derogation in its Art 15 in times of war or other public emergencies. The states could use this clause when participating in military operations outside their territories if they would consider the ECHR as applicable for these situations. The fact that they do not raise it can be considered as another indication of the current practice.

The question of extraterritorial applicability of the ECHR was examined in the "Bankovic case" ⁶ which dealt with the NATO bombing of the TV station in Belgrade in the NATO campaign against the Federal Yugoslav Republic during the Kosovo conflict. The ECtHR examined the essential question of admissibility of the case given the fact that the claimed violations took place outside the territories of the impugned states. It would therefore be necessary to establish that the involved individuals were still "within their jurisdiction" in order to trigger the protection under the ECHR.

⁶ *Banković and Others v. Belgium and 16 Other Contracting States* (Application no. 52207/99).

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The ECtHR ruled that from a standpoint of public international law, the jurisdictional competence of a state is primarily territorial. It recognized that there are exceptional cases of extraterritorial jurisdiction but the respective Art 1 of the ECHR "must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstance of each case." It was also decided that since the ratification of the ECHR, state practice indicates that states do not accept an extraterritorial meaning of the ECHR mechanisms. This is underlined by the fact that there were a number of military actions of the contracting states (such as in the Gulf or BiH) and no state made a derogation under Art 15 of the Convention (derogation in time of emergency) as would have happened if the contracting states had considered an extraterritorial application of the ECHR.

The ECtHR recognized that only in exceptional and limited circumstances, the states are obliged to apply the ECHR outside their own territory, when the state, through effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the government of that territory, exercised all or some of the public powers normally exercised by that Government (e.g. Turkey in Northern Cyprus). Here, an exception to the territorial principle can be found, namely the "effective control of an area."

The ECtHR also made the point that had the drafters of the ECHR wished to ensure extensive jurisdiction, they would have used the wording of the four Geneva Conventions: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."

It concluded that in order to invoke protection under the ECHR, a "jurisdictional link" between the victims of an alleged human rights breach and the respondent state needs to be established. Accordingly, the application was declared inadmissible.

Another interesting "post-Bankovic" judgment by the ECtHR is the case of *Issa and Others v. Turkey*⁷. The applicants claimed that in 1995 a group of Iraqi shepherds had been killed and mutilated by Turkish troops during a Turkish military operation in northern Iraq. Due to a lack of evidence, the ECtHR decided that the affected individuals had not been within the jurisdiction of Turkey when the alleged crimes took place. It is not this in merito decision but the reasoning which is remarkable in this case. It could be argued that the Court "opened" the territorial-based line of argument of Bankovic as it did not declare the case inadmissible due to a lack of jurisdiction but it actually went into the merit-phase. It implies that even a temporary and only de-facto partial control of a territory might be sufficient to establish jurisdiction: "It is not necessary to determine whether a Contracting Party actually exercises detailed control over the policies and actions of the authorities in the area situated outside its national territory, since even overall control of the area may engage the responsibility of the Contracting party concerned."

In addition to the practice of the ECtHR, a similar conclusion was made recently by the House of Lords which decided about the deaths of six Iraqis killed by British troops⁸. One man who was under British custody in a detention centre operated by the UK died. The House of Lords decided that the application of the ECHR is essentially territorial but that exceptionally the jurisdiction of states extends to outposts of the state's authority abroad such as embassies and consulates, including this exception to a detention centre operated by a state party in the territory of another state, such as in this particular incident.

⁷ *Issa and Others v. Turkey* (Application no. 31821/96).

⁸ [Al-Skeini and Others v. Secretary of State for Defence](#), UK House of Lords 26 (2007).

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It was within the jurisdiction of the UK and that therefore the ECHR was applicable. The claims of the other five men killed in the field were turned down as the UK had no legislative or judicial authority in Iraq even if effective control might have existed.

5. Conclusion

This article assessed the decisions of the Constitutional Court of BiH in which the Court ruled on appeals related to actions of the international military force (SFOR) deployed in BiH. The appellants claimed that their human rights were violated and requested Bosnia and Herzegovina to compensate them for the material and immaterial damage they suffered. In its decisions, the Constitutional Court recognized the specific status of the SFOR mission and its mandate and confirmed that SFOR may not be subject to the jurisdiction of local courts including the Constitutional Court itself. However, in the explanatory remarks of the decisions, the Court stated that "the arrest and detention of the appellant was unlawful in the sense of Article 5 paragraph 1 of the European Convention of Human Rights," but it did not proclaim SFOR liable for those action. The Constitutional Court ruled that there was liability of BiH as it did not investigate or take any action to protect the rights of its citizens.

The decisions of the Constitutional Court of BiH are legally vague as they attempted to find a compromise solution. The legal reasoning of the rulings lacks a critical examination of the lawfulness of SFOR actions. As opposed to the authorities and powers granted to SFOR under the mandate given by the UN Security Council Resolutions and the provisions of the Dayton Agreement, the Constitutional Court assessed the arrest and detention performed by SFOR troops as unlawful.

For comparative reasons, the article presented a similar case dealing with detention by KFOR troops which was submitted to the European Court of Human Rights. The ECtHR ruled differently than the BiH Constitutional Court and recognized the maintenance of international peace and security as the primary goal of the UN Charter. The ECtHR ruled that the ECHR cannot be interpreted in a manner which would subject the acts or omissions of the Contracting Parties covered by the UNSC Resolutions to the discretion of the ECtHR. In three other examples – the ECtHR in its Issa and Bankovic rulings as well as the decision of the UK House of Lords in the Al Skeini case – it was argued that states generally do not accept an extraterritorial application of the ECHR mechanisms and that, only exceptional cases - which tackle the juridical control of the Contracting Party outside its territory - may assume the application of the ECHR abroad.

A mandate by the UN Security Council to secure international peace and security will often require activities which will not always meet the strict requirements of the ECHR. There is no legal argument to give the provisions of the ECHR priority over the UN Charter's obligations. The article presented two different views of different courts' decisions deciding on the actions of internationally composed military forces mandated by the UN Charter in a host nation and neither found the international military force accountable or liable for their actions on the territory of the host nations.

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A Visit to the Lion's Den – Impressions of the Legal System in Northern Afghanistan

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Anyone familiar with the recent history of Afghanistan knows the name of Ahmad Shah Masud, leader of the anti-Taliban Northern Alliance who was assassinated two days before 9/11. Known to his people as the "Lion of the Panjsher," it was into the spiritual heartland of Massud that we ventured to appraise the current state of the justice system in this rugged and beautiful area of the country.

Upon landing at Marmal airbase, home of the German-led Regional Command North, one cannot possibly miss the breathtaking view that lies to the north: a vast, cold plain met by rolling hills and towering peaks marking the approaches to Uzbekistan. After gazing at the postcard view, we embarked in our vehicle and were soon the recipients of a warm Scandinavian welcome from our hosts at PRT Mazar-e-Sharif. The PRT is dominated by an effigy of the Lion of the Panjsher that stands just outside its walls, keeping a watchful eye on the base. With a distinct chill in the air, the night skies were incredibly clear and afforded a great view of the huge harvest moon. The local pattern of life also told us it was harvest time: streets clogged with carts, customers and merchants doing a brisk trade in all types of produce. Meat, both slaughtered and on the hoof was on sale as well, including one seen riding none-too-happily in the open trunk of an old Lada sedan!

Once unpacked, we set out immediately to attack our ambitious list of persons and places that we wanted to visit and interview. As the next few days would prove, our reach did exceed our grasp but we were still able to cram in most of our planned visits to inform our report to ISAF HQ on the state of justice in this exotic region. We also got acquainted with military lawyers working in the region from Germany, Norway, Latvia, Sweden and Finland. They provided us with their informed views on the state of the legal system in RC North, and the capabilities that must be brought to bear to rejuvenate it.

Our task here was to gather facts about this region in support of the strategy to revive Afghanistan's justice system. Building on the plans that have been developed since the Bonn Agreements of 2001, our job as military lawyers is to go forth and get the ground truth about the state of the legal system throughout Afghanistan. In doing so, we assess it against standards that reflect the three pillars of the Afghanistan National Development Strategy (ANDS): Security; Governance, Rule of Law and Human Rights; and Economic and Social Development. There is a significant legal element to each pillar, not just the Rule of Law. For example, in order for economic expansion to occur, the legal system must support the private ownership of property. This is something we may take for granted at home, but for the Afghans there often is no land title office, no court registry and no personal property security registry. Absent these fundamentals, the ownership of assets and business development are highly-risky at best, and economic progress is extremely unlikely. Thus, while we were concerned primarily with "Courts, Cops and Corrections," we cast our net wider. The law infuses every area of a working modern society and nothing can be taken for granted here.

What we learned was that every area requires attention, from physical infrastructure, to supplies, to training of staff. Some of these needs are beyond our scope, like providing a continuous supply of electricity to offices, but that does give an idea of the enormity of the task in Afghanistan. That having been said, the foundation for progress has been laid. The military lawyers, particularly those from Sweden and Finland, Major Jens Lindbergh and Major Jussi Kivi, have established working relationships with members of the local legal community. The American attorneys who work at the austere setting of the Regional Training Centre, Mazar-e-Sharif, are delivering a comprehensive training program to Afghan police and prosecutors, both women and men.

A Visit to the Lion's Den – Impressions of the Legal System in Northern Afghanistan

A firm of defence lawyers funded by Canada and Germany has a modern office in the heart of the city, complete with an automobile and the equipment they need to properly service their clients. That is the optimistic view. On the other hand, we learned that there are no proper interview facilities in the local jail, and that the regional prosecutor's office operates with privations we can not imagine back home: we witnessed a turbaned man with two assistants working in a cold room lit only by the autumn sun, laboriously entering information in sets of paper journals. He was surrounded by files that covered the floor because the office lacks even filing cabinets. Our hosts told us he had computer training, but lacks a computer. It seems the legal system is like a jigsaw puzzle with some of the pieces missing.

During the course of our visit, we met with prosecutors, defence counsel, legal instructors and military lawyers. We also encountered a great number of local people who responded to us with warmth - friendly waves and smiles, not blank stares. It is apparent that the people and the officials of this region are glad that ISAF is present. Our challenge is to live up to the hopes that ISAF forces create, by helping them develop their society in order to enjoy the benefits of stability and prosperity. Law plays a large part in that goal, and we now have a better understanding of which tasks the PRT and the Regional Command can and cannot do. The more advanced work now at hand needs greater cooperation with our partners in UNAMA and the development sector. The opportunity is a rich one, thanks to the good security climate in the region. As the ancient maxim states: A journey of a thousand miles begins with a single step.

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Regional Command North, November 2008 - Officials of the Mazar-e-Sharif Prosecutor's Office host ISAF Legal Officers for a Tour of their Facility

The Law of Armed Conflict (LOAC) and Human Rights in International Peace Operations – A Joint Workshop

Mr. Frederic Ischebeck-Baum (DEU Civ), Legal Intern – NATO School

From 3 to 5 December 2008 the NATO School Oberammergau offered a workshop on the Law of Armed Conflict (LOAC) and Human Rights in International Peace Operations in co-operation with the International Institute of Humanitarian Law (IIHL), San Remo, Italy. Both institutions signed a Memorandum of Understanding on 23 July 2008 and have been establishing their relationship since that day. The workshop happened to be the very first of joint projects and it turned out to be a welcome and extraordinarily well received event which will without a doubt have set the scope for similar projects in the future.

The course programme was clearly designed for those with an advanced knowledge in LOAC and public international law. Dr. Katharina Ziolkowski, (Germany), Legal Adviser to NATO School Oberammergau and LTC (ret.) Juhani Loikkanen, (Finland) former Director of the Military Department IIHL, led the international participants through the two-and-a-half days.

On early 3 December the NATO School Commandant, Colonel James J. Tabak (USMC), welcomed the participants to the School and emphasized in his speech that first of all it is important to establish a wide knowledge of LOAC and human rights when working in a military environment, and secondly, one has to understand that views and opinions will always differ to a certain extent, which is nothing but natural. Having said that, Colonel Tabak pointed out that it seems very advisable to not necessarily agree with the others but to try and understand their point of view. Colonel Tabak made clear that in order to achieve better understanding and furthermore establish relationships for the future, the NATO School very much appreciates such forums.

LTC (ret.) Juhani Loikkanen started the academic day by introducing to the audience the International Institute of Humanitarian Law San Remo. Although not everyone had already attended a course in San Remo most of the audience was very well aware of the institute and its ongoing activities. Over the last decades the institute or IIHL has gained wide international reputation and it is still growing. The IIHL is a unique platform not only for courses in the field of LOAC but also for refugee law, law of displacement, migration law and related topics. They have annual round table meetings, i.e. expert meetings on different legal issues with high-level experts from all over the world who possess diverse and distinctive academic or military qualifications.

One of them is Professor Dr. Wolff Heintschel von Heinegg, who holds the Chair for Public Law, especially Public International Law, European Law and Comparative Law, and who is Vice-President of the Europa-University Frankfurt/Oder. He is a widely published author in the field of international law, LOAC and especially the law of naval warfare. When LTC (ret.) Loikkanen had finished his presentation, Professor Heintschel von Heinegg started lecturing on the legal framework of international human rights and LOAC in international peace operations and continued to do so for the rest of the day, which was very much appreciated by the audience. He particularly explained the contentious relationship between LOAC and human rights, leaving enough room for questions and lively discussions.

Throughout his lectures Professor Heintschel von Heinegg never became tired of letting his audience know how important and essential it is to keep things basic and simple while dealing with the legal regime of international peace operations. Especially when it comes to more than one legal regime being applicable, he stressed that one is likely to lose the essential overview. In order to keep the latter, keeping things simple and not making them too complicated seems the only viable way.

¹ Law of Armed Conflict.

The Law of Armed Conflict and Human Rights in International Peace Operations – A Joint Workshop

A fair example might be the so-called "Chapter VI and-a-half" or "Chapter VII minus-x"-operations. It has never been quite clear which category these missions actually belong to since they are most likely to contain the use of force up to deadly force due to the assigned mandate, a matter that is often underestimated among lawyers and practitioners.

Talking about the use of force, Professor Heintschel von Heinegg pointed out that the inherent right of self-defence will de facto always remain with the claiming states even after the response to an imminent threat or armed attack, other than it is actually said in Art. 51 UN Charter. States are most unlikely to leave the monopoly to the United Nations Security Council. As for international peace operations, individual self-defence still remains an even more controversial issue particularly when it comes to drafting, understanding and implementing Rules of Engagement.

At this stage the well-known issue of national caveats is met and has to be dealt with in theory and practice, the latter making it rather difficult for command and control operating on the ground. Whatever the national view of a sending or contributing state might be, it always has to be taken into account that one must not disregard the domestic law of the receiving or host state – assuming there is one.

Thus, again the legal regime of international peace operations is very likely to be a merge of laws and it cannot be seen as a sole body of law. Unfolding the cases Loizidou², Bankovic³, Behrami and Saramati⁴ as examples, Professor Heintschel von Heinegg explained the scope of human rights and their approach towards what is called command responsibility under the light of judicial decisions, the latter being a yardstick for any kind or form of implementation of such rules.

The audience then was split up into five syndicates who worked on case studies assigned to their group that they later presented to all the participants in the workshop, an activity that prompted lively discussion in the classroom. At the end of his lectures, Professor Heintschel von Heinegg again emphasised that the political will of each sending state plays a crucial role and that due to its nature the legal regime is in fact far from being settled. However, there is no doubt that human rights do apply in international peace operations as long as acts are imputable to the contributing states and not to the UN only.

The day was completed by LTC John Spierin, Irish Defence Forces Training Centre, who gave an Exercise Staff Briefing in order to prepare the audience for the final exercise which was to be tackled on 5 December. The course was divided into five different syndicates who were to give a presentation due to the Decision Brief on Friday morning. The syndicates consisted of J1, J2, J3, CIMIC, LEGAD and CIV POLICE.

² <http://www.hri.org/news/special/loizidou>.

³ <http://www.echr.coe.int/eng/Press/2001/Dec/Bankovicadmissibilitydecisionepress.htm>.

⁴ <http://www.europeanrights.eu/index.php?lang=eng&funzione=S&op=2&id=201>.

The Law of Armed Conflict and Human Rights in International Peace Operations – A Joint Workshop

The next day was opened by Dr. Marco Odello from the Department of Law and Criminology, Aberystwyth University, Wales, United Kingdom, who lectured on the UN Charter and Peacekeepers as subjects to its laws and principles and how this relationship has to be evaluated. Dr. Odello specifically pointed out that in theatre the UN-Charter transfers the responsibility to protect (or R2P) from the state as a subject to international law itself to the very level of the Commander. Hence, in international peace operations the UN-Charter unfolds its scope whenever and wherever UN troops are operating. Dr. Odello stressed the fact that having conducted the responsibility to the Commander does not leave the UN or its authorities without any responsibility or obligations at all. The UN, to be understood as a legal body consisting of contributing states, have the responsibility to protect human rights and by doing so tolerate breaching the sovereignty of a third state in the worst case, which can then lead to a humanitarian intervention.

To this day, the legal basis for humanitarian intervention remains most contentious, although state practice and international customary law show that it is, *prima facie*, an accepted means to thwart grave breaches of international law or human rights or to ban or cure humanitarian crisis. Dr. Odello underlined this thought by presenting a statement by former UN-Secretary General Kofi Annan, from his Millennium Report 2000: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?"

Having clearly arrived at a stage where legal evaluations, be they unilateral or multilateral in nature, merge with a somewhat international moral, the answer to the question above happened to be more than obvious to the audience. So was the very point of Dr. Odello's stimulating presentation. It was followed by a second one, in which Dr. Odello presented his ideas on the Conduct of Peacekeepers, i.e. Human Rights and Legitimate Use of Force. This, apart from the right to self-defence, must be in accordance with the law applicable. Moreover, when the framework is clear and the use of force is not prohibited as such, methods and means have to be regulated which leads to the principles of the LOAC. However, when legal gaps are met the Marten's Clause seems a helpful tool for at least keeping up with the basic principles. Both of Dr. Odello's presentations were followed by lively discussions which gave rise to the thought that much has already been achieved but still there is a long way to go.

Col. Dr. Michael Pesendorfer, Legal Adviser to the 7th Infantry Brigade of the Austrian Armed Forces, then took the floor and lectured on the history of human rights and their role within every stage of a state, i.e. from peacetime to international or non-international armed conflict. Col. Dr. Pesendorfer pointed out that each state has the obligation to prevent and prosecute the violation of human rights, particularly slavery, torture, violation of the freedom of religion and the freedom of thought. These are absolute rights which once violated lead to what is finally laid down as Grave Breaches in the Rome Statute.

The lecture was followed by related case studies and the course split up into the syndicates again. Here the groups had to take decisions on how to solve arising problems in international peace operations when confronted with absolute rights and had to do it in accordance with the different legal regimes, including the co-operation with local authorities. Soon everyone realised that often there might be one problem but more than only one clear cut solution, which is nothing but a comprehension taken from practical experience. The audience very much benefited from Col. Dr. Pesendorfer's experience in the field.

The Law of Armed Conflict and Human Rights in International Peace Operations – A Joint Workshop

Like the day before LTC Spierin completed the academic part by giving a second Staff Briefing on the exercise to be held the next morning. The scenario put the course participants in the middle of an international peace operation and the five syndicates were to evaluate and theoretically conduct their mission based on a fictitious UNSCRES, making use of all legal documents at hand, whereas the preparation as such was entirely left to them. On Friday morning the briefing itself went very well and particularly due to LTC Spierin's remarks and comments everyone became entirely aware of the fact that planning and executing international peace operations is far from being based on a clear legal framework. Nevertheless, implementing such operations is seen as essential and in fact close to binding, taking into account the customary international law tendency as well as the given UN concept.

The NATO School Oberammergau is situated at the very beginning of the Bavarian Alps. For every student this mere fact is an extraordinary experience; that is, however, not the reason why the workshop took place there. According to Art. 83 AP I⁵ all High Contracting Parties must enable and ensure the constant education of their Armed Forces Legal Advisers. This gives rise to the thought that it might be adequate and in fact very necessary for NATO itself to ensure a common education in the field of LOAC and international law. The first NATO School workshop in co-operation with IIHL can be and without a doubt will be the starting point of what will promptly gain more attention within the NATO community. It can in fact be developed to an in-house education of a standard hardly to be found elsewhere, educating Legal Advisers working either the national floor or in the NATO environment. Especially, it can present a forum to exchange different national views on current problems of LOAC posed upon the international community by the nature of the modern armed conflicts.

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The Law of Armed Conflict and Human Rights in International Peace Operations – A Joint Workshop



LTC (ret.) Juhani Loikkanen, (Finland) IIHL
(Photo by PAO, NATO School, Oberammergau)



Professor Dr. Wolff Heintschel von Heinegg, IIHL Council
(Photo by PAO, NATO School, Oberammergau)

Book Review : United Nations Sanctions and the Rule of Law

Mr. Vincent Roobaert, Assistant Legal Advisor – NC3A¹

J. M. Farrall, United Nations Sanctions and the Rule of Law, Oxford University Press, Oxford, 2007 (ISBN 978-0-521-87802-9).

It has become usual for journalists and the general public alike to deny the efficacy of norms of international law by pointing out examples of their breach or the selective character of their application. For most laymen, the national legal system is used as an idealised benchmark against which the system of international law is to be compared. These critics, however, do not sufficiently appreciate that national legal rules are also applied selectively (e.g. the discretion of the public prosecutor to prosecute a criminal offence) and are violated daily (e.g. minor traffic offenses, burglaries,...) while the general efficiency of the whole national legal system remains undisputed. Also, while it was easier in the past to point out to the lack of enforcement or the selective application of the rules of international law, the end of the Cold War has been followed by, among others, the rebirth of the Security Council and the creation of new international jurisdictions to deal with violations of international law, such as the two international criminal tribunals and the International Criminal Court. While the number of sanctions regimes imposed by the United Nations Security Council has increased, so has the number of military operations to enforce the rule of international law (e.g., NATO air campaign in Kosovo, Operation Allied Provider). As the application of sanction regimes increased, academics have been able to get a better picture of the inner workings and practice of the Security Council, allowing them to make assessment on the efficiency and legality of such practice.

Mr. Farrall's book aims at doing just that. In his monograph, he takes the somewhat polemical position that until now the United Nations Security Council has applied sanctions in a manner that undermines the rule of law. Before developing his arguments and proposing improvements the author starts with an excellent and thorough examination of the history of sanction regimes before and after the adoption of the United Nations Charter. The author also includes as an annex a detailed and systematic review of all sanction regimes adopted by the Security Council of the United Nations from the first ever sanction regime imposed in 1966 on Southern Rhodesia to the sanctions imposed against Iran in 2006.

The sanction regime of the United Charter is examined in great details and the author reviews the various cases which can lead to the intervention of the Security Council on the basis of Article 39 of the United Nations Charter, namely threats to the peace, breaches of the peace and acts of aggression. The next chapters are devoted to the sanction systems and looks at issues such as the various types of sanctions (economic or non-economic), the targets (usually States or identified individuals/organizations), the definition of objectives and timelines, the prevention of unintended consequences (e.g., humanitarian issues) and the setting up of various supervisory committees (e.g., sanction committees, bodies of experts, etc...).

¹ This review only sets out the opinion of the author and not those of NATO, NC3A or the NATO Member States.

Book Review : United Nations Sanctions and the Rule of Law

While the first chapters of the book mainly aim at describing the sanction regimes of the United Nations, the following chapters are more analytical in nature. The author's view is that the sanctions regimes put in place up to now by the United Nations Security Council have not been compliant with the rule of law. He then builds a model of the rule of law applicable to sanctions based on the following principle: transparency, consistency, equality, due process and prevention of undesired effects on the civilian population and third States:

- Transparency: the author pleads for a clear and transparent exercise of political power. Accordingly, there is a need for the Security Council to publicly state its reasoning when adopting sanctions, the objectives of the sanctions and the basis upon which those sanctions are taken. Also, sanction committees should report to the Security Council on a regular basis.
- Consistency: the behaviour of the Security Council should be predictable to third parties. Accordingly, the intervention of the Security Council should not be seen as arbitrary. Also, there is a need for ensuring consistency in the objectives and scope of sanctions.
- Equality: linked to the preceding criteria. Different States should be treated alike when the situations are alike. The author raises the recurring issue of the veto power of the permanent members of the Security Council.
- Due process: target States and individuals should have the opportunity to express their point of view. An example of this is in relation to the freezing of assets².
- Prevention of unintended consequences on the civilian population and third states. The author pleads for ensuring proportionality between the target's behaviour and the sanctions' scope. In particular, he pleads for a humanitarian assessment of the effects of the sanction regime and the inclusion of exemptions, e.g. medical supplies.

Based on this model, the author proposes policy reforms to ensure compliance between the sanction regime and the rule of law, such as ensuring that more discussions take place in an open forum, clearly identifying the objectives of sanctions, etc. While some of the improvements proposed by the author seem fair and reasonable, others clearly are not. For example, the suppression of the veto power of the permanent members of the Security Council clearly has no connection with present day international politics.

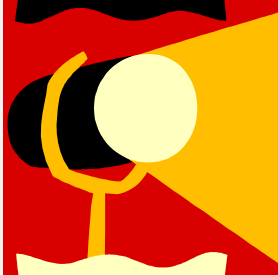
² In that regard, see the *Iain Cameron, the European Convention on Human Rights, Due Process and United Nations Security Council Counter-Terrorism Sanctions*, Council of Europe, 06/02/2006, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/public_international_law/Texts_&_Documents/2006/I.%20Cameron%20Report%2006.pdf

Book Review : United Nations Sanctions and the Rule of Law

The analysis presented by Mr. Farrall is well structured and interesting. The book is worth reading for anyone interested in the sanctions regimes of the United Charter. However, one cannot abstain from believing that the rule of law model developed by the author can only remain an ideal which the Security Council members should aim at. Indeed, while the author recognizes the deeply political nature of United Nations sanctions, he clearly set those elements aside in his analysis and his model. The logical consequence of this would be that any sanction regime applied by the Security Council would be found non-compliant with the model set out above if another State had not been the target of similar sanctions in similar circumstances. While equality and consistency are worthwhile criteria to aim at, they should not lead to disputing the principle of sanction regime itself. The author probably was influenced by the negative consequences on the civilian population of some sanction regimes applied in the recent past (e.g. Iraq). His analysis reflects an a priori negative attitude towards sanction regimes. However, absent a worldwide international court with wide jurisdiction and enforcement powers against States, sanctions remain the only means of enforcement of the rule of international law.

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Spotlight



Commander

Kimberlie Young

Legal Adviser, HQ

SACT



Name: H. Kimberlie Young

Rank/Service/Nationality: Commander, Judge Advocate General's Corps, U.S Navy, U.S.A.

Job title: LEGAL Advisor HQ SACT

Primary legal focus of effort: Joint legal training and education within NATO including legal community training

Likes: Outdoor activities with my animals: Caitie, my thoroughbred horse, Piper , my Border Collie, and Pele, my Rhodesian Ridgeback; being at the beach; running; hanging out with my sisters, nieces and nephews; traveling to new places.

Dislikes: People who do not treat animals well; people who do not take care of the environment; chocolate.

When in Norfolk, everyone should: Go to Virginia Beach and walk on the beach or Chesapeake Bay barefoot (even in winter) and look for seashells

Best NATO experience: So far, traveling to Istanbul for a working group meeting, seeing the culture there, and dancing with CAPT Fountoulakis, Greece (HQ SACT) and COL Uysal, Turkey (SHAPE) at the same time!

My one recommendation for the NATO Legal Community: Those who speak only one language should learn a second language (which I am doing now on Rosetta stone).

Kimberlie.Young@act.nato.int



HAIL

&

FAREWELL

Hail

JFC Naples : LCDR Martin Fink (NLD N) joined in December 2008

Farewell

JFC Naples : LTC Ronald Gilissen (NLD AF) left in December 2008

GENERAL INTEREST/NATO IN THE NEWS

- The NATO Military Committee held two days of meetings in Brussels on November 19-20, 2008. More information can be found at
<http://www.nato.int/ims/news/2008/n081121a-e.html>
- A meeting of the North Atlantic Council at the level of Foreign Ministers was held at NATO Headquarters in Brussels on 2-3 December 2008. Final Communiqué can be found at
<http://www.nato.int/docu/pr/2008/p08-153e.html>
- A meeting of the NATO-Ukraine Commission at the level of Foreign Ministers was held at NATO Headquarters in Brussels on 3 December 2008. The Chairman's statement can be found at
<http://www.nato.int/docu/pr/2008/p08-155e.html>
- The NATO mission Operation Allied Provider was completed successfully. The mission consisted in escorting World Food Programme (WFP) chartered vessels delivering humanitarian aid to Somalia. More details on
<http://www.nato.int/shape/news/2008/12/081212a.html>
- The NATO Parliamentary Assembly urged continued commitment to Kosovo. The 54th annual session of the NATO Parliamentary Assembly took place in Valencia, Spain on 14-18 November 2008. Press Release can be found at
<http://www.nato-pa.int/Default.asp?CAT2=0&CAT1=0&CAT0=0&SHORTCUT=1677>
- The first video-only edition of the NATO review is now available. The videos look at the key security issues in the Balkans, with contributions from people at the centre of the action. It starts with the implications of Radovan Karadzic's arrest and analyses if the overhaul of Bosnia's security forces was successful.
<http://www.nato.int/docu/review/2008/07/EN/index.htm>

GENERAL INTEREST/NATO IN THE NEWS

*"In preparing for battles
I have always found
that plans are useless,
but planning is
indispensable."*

General Dwight
Eisenhower

- An article by Julie Dickson of the University of Oxford on the character and relations between legal systems in the European Union can be found at the following link

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1279612

- Anja Sibert-Fohr wrote an essay on "the Crime of Aggression : Adding a Definition to the Rome Statute of the ICC". The text is available on the ASIL website

<http://www.asil.org/insights081118.cfm>

- Presentations made during the LEGAD Conference held in Kabul, Afghanistan in October are available at the CMO/CFC website

<http://www.cimicweb.org>

- Effective January 12, 2009, all VWP (Visa Waiver Program) travelers to the USA will be required to obtain an electronic travel authorization prior to boarding a carrier to travel by air or sea to the USA under the VWP. This does not apply to persons traveling under NATO travel orders. For more information on the VWP, consult

<https://esta.cbp.dhs.gov>

- **Facebook website used to serve legal papers.** An Australian court has allowed a lawyer to use Facebook to serve legal documents on a couple who defaulted on a housing loan in what the social networking site believes is the first case of its kind

http://www.ft.com/cms/s/0/fcb5c63c-cbdb-11dd-ba02-000077b07658.html?nclick_check=1

UPCOMING EVENTS

- The next **NATO Legal Advisers Course** will be held on May 18 - 22, 2009.

http://www.natoschool.nato.int/internet_courses/courses_guide.htm

- The **NATO Legal Conference** will be organised from June 8 - 12, 2009 in Strasbourg, France.
- The next **Advanced NATO Operational Law Course** is scheduled at the NATO School from July 6 - 10, 2009

http://www.natoschool.nato.int/internet_courses/courses_guide.htm

- A seminar on "Legal Dimensions of Maritime Forces in Operations" will be taking place from 16-20 March 2009 at the German Naval Tactics Center in Bremerhaven, Germany. Purpose of this seminar is to discuss and exchange views on the legal aspects of military operations in a joint and combined environment. For more information :
RalphGrabow@bundeswehr.org

- A 2-Day conference is organized by SOLON, the Institute of Advanced Legal Studies, and the Centre for Contemporary British History on February 20 and 21, 2009 at the Institute of Advanced Legal Studies in London. Subject of the conference is **War Crimes – Retrospectives and Prospects**: "Identifying war crimes and the perpetrators is a key part of post-conflict resolution". Speakers include, Professor David Fraser, Mr. Michael Kandiah, Dr. David Seymour. Details including the programme and the booking form are available on the SOLON, IALS and CCBH Websites.

<http://www.perc.plymouth.ac.uk/solon/>
<http://ials.sas.ac.uk/>
<http://icbh.ac.uk/>

"I am always doing that which I cannot do, in order that I may learn how to do it."

Pablo Picasso

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